

Corporate Property Services - The A-Z of effective Property Management

This is the second in a series of alphabetical property management tips and reminders aimed at Corporate Occupiers with operational and non-operational/surplus properties.

B

ack to Back Leases

Back to back leases (also known as 'post box' leases) are arrangements where a sublease is granted on terms closely matching those of the headlease. They are predominantly used where headlandlord's consent to assign cannot be obtained and are intended, as far as possible, to pass on the full headlease liabilities to the subtenant. However, shortfalls can inadvertently arise, the two main reasons being due to rent reviews and service charges.

Rent Reviews

There are three basic types of sublease review clause in back to back leases (with some variations):

- Open market rent reviews
Shortfalls usually occur due to the drafting of the sublease; e.g. if the user clause is more restrictive than that in the headlease. Whilst there may be good reason for making the sublease more restrictive, the impact at rent review and potential for rental shortfall should first be considered.
Shortfalls may also occur where the headlease and sublease reviews are settled in isolation (e.g. different agents appointed to deal with each).
- Subtenant to pay the same rent as the headlease
The sublease will often grant the subtenant the right to be involved in negotiations and to approve the headrent before settlement. If the intermediate landlord negotiates the headlease review without complying with the sublease review provisions there is a real risk that any increase can not be passed to the subtenant.
- Subtenant to negotiate the headlease review
The intermediate tenant has a liability to pay the headrent irrespective of what happens to the sublease and they should always satisfy themselves that the subtenant has negotiated the lowest possible rent.

Service Charges

The tendency is for intermediate tenants to pay the headlease service charge without query as the costs will be passed on to the subtenant. However, doing so may prevent dispute of the figures at a later date. This becomes an issue if the subtenant raises valid arguments against the expenditure and refuses to pay since although the same arguments are likely to apply to the headlease, the intermediate tenant may be deemed to have accepted the expenditure and will therefore be unable to recover this from either the headlandlord or the subtenant.

Back to back leases require greater management than you may think. Our nationwide specialists are experienced in dealing with the issues which arise with this type of arrangement - for further advice please call 0870 777 6292 or contact one of our nationwide specialists directly, as below:

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